

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

August 17, 2016

### **MINUTES**

#### **DIVISION STAFF PRESENT:**

Jonathan Stewart, Division Director  
Mark Fagergren, Education and Licensing Director  
Jeffery Nielsen, Chief Investigator  
Justin Barney, Hearing Officer  
Elizabeth Harris, Assistant Attorney General  
Judith Jensen, Assistant Attorney General  
Amber Nielsen, Board Secretary  
Jennica Gruver, Real Estate Education Coordinator  
Van Kagie, Investigator  
Mark Schaerrer, Investigator  
Kadee Wright, Investigator  
Sarah Nicholson, Investigator  
Chris Martindale, Investigator  
Jill Kelsch, Division Staff  
Hillarie Murray, Division Staff  
Lacey Vawdrey, Division Staff

#### **COMMISSION MEMBERS PRESENT:**

Russell K. Booth, Chair  
Lerron Little, Vice Chair  
Lori Chapman, Commissioner  
William O. Perry, IV, Commissioner  
Calvin R. Musselman, Commissioner

#### **GUESTS:**

Tammy Lund	Kreg Wagner
Dan Naylor	Shane Norris
Mike Hebert	Brandon Bluth

The August 17, 2016 meeting of the Utah Real Estate Commission began at 9:01 a.m. with Chair Booth conducting.

## **PLANNING AND ADMINISTRATIVE MATTERS**

Oath of Office - The Oath of Office was administered by Administrative Law Judge Masuda Medcalf to Russell Booth and Lerron Little.

### Elections for New Officers for 2016-2017

Nominations were accepted and voted on for the positions of Chair and Vice Chair. The new Chair will be Lerron Little, and the Vice Chair will be Lori Chapman.

The meeting proceeded with Chair Little conducting.

Approval of Minutes – A motion was made and seconded to approve the minutes as written from the July 20, 2016 meeting of the Commission. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The motion was approved.

There was no Public Comment.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Jonathan Stewart**

Director Stewart presented a proposed rule amendment for consideration by the Commission. Mike Ostermiller and Paul Smith contacted the Division after the rule amendment on broker experience went into effect last year requesting clarification particularly in regards to residential property management. The Division is presenting some minor changes to the rule. The changes would allow for residential property management agreements for fewer than five units would now be eligible for some credit, change the phrase from master agreement to property management agreement, and change fair housing from elective credit to core credit. Chair Little asked whether this change only affects residential and does not include commercial property management. Director Stewart stated that the changes were only made in the residential property management language. Commissioner Booth recommends that the language be the same for both residential and commercial. Director Stewart noted the Division would make the change. A motion was made that the rule amendment be approved with the updated language discussed. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The motion was approved with Division concurrence.

Director Stewart presented some proposed changes for consideration at the upcoming Legislative Session. Director Stewart stated the first proposed change which would apply to all industries under the Division would clarify that the Division has the ability to conduct a private or public investigation. The second proposed change would add authority specifically stating that the Division can interview witnesses. The third proposed change would allow for citation authority to be used within one year (instead of six months) from the date of the conduct.

The first proposed change which would affect real estate would change 61-2f-403

to give the Division the option of paying for a full audit of a trust account if the Division finds evidence that funds were mismanaged. If the full audit proves gross mismanagement the licensee will be required to reimburse the cost of the audit. The second proposed real estate change would change the signed statement notification requirement in 61-2f-304(1)(a) when a broker terminates an associate broker or sales agent.

#### **ENFORCEMENT REPORT – Jeffery Nielsen**

Mr. Nielsen reported in the month of June the Division received 30 complaints; opened 12 cases; closed 48 cases; leaving 211 open cases. There are 59 cases assigned to the AG's office.

#### **Stipulation for Review**

Shawn Janke

Thomas A. Jackson

Mr. Nielsen announced two new Real Estate Investigators have been hired by the Division. Chris Martindale has significant investigative experience as well and is a former real estate agent. Sarah Nicholson has been with the Division for the past year in Licensing and had prior investigative experience.

#### **EDUCATION AND LICENSING REPORT – Mark Fagergren**

Mr. Fagergren announced the Division has two new licensing staff members named Hillarie Murray and Lacey Vawdrey. Mr. Fagergren announced the third member of the licensing staff, Jill Kelsch, will be retiring in the next month.

Mr. Fagergren noted there has been an increase of approximately 105 licensees per month.

Mr. Fagergren presented some concerns from licensees. One licensee expressed some concern over the broker experience rules requiring "full time" experience. The licensee recommends the removal of the term "full time" from the broker experience requirement, should the agent have sufficient experience from part time work. Mr. Fagergren stated the Division pro-rates experience for part time employment; an agent who works 20 hours per week would take 6 years to get the active experience requirement of 3 years. However, he noted that the rule does state "full time experience." Mr. Fagergren is presenting this to the Commission to see if they have any corrections they would like to make on the rule. Commissioner Musselman feels the rules as written and as enforced by the Division seems sufficient. The Commission agrees the hours of experience are important. Commissioner Musselman opened discussion on the trouble with having experience points while in a team without having documentation.

Commissioner Musselman stated that concern is similar to the requirement that experience gained while a member of a team needs to have documentation which

shows the agent was legally attached to the transaction in order to gain credit for the transaction. The Commission agrees it is difficult news to give applicants; however, the Commission agrees it is the only way to verify the experience. The information should be disclosed who is working on the transactions not only for compliance for experience points but also for protection to keep the public informed.

Mr. Fagergren reported a licensee was frustrated by flat fee MLS listings and limited or no service agreements for "For Sale by Owners." The licensee had some concerns regarding exclusive brokerage agreements and minimum services and whether or not the broker experience points should be the same for non-exclusive brokerage agreements. Mr. Nielsen noted the Commission could draft a chart which would differentiate between the point values. The Commission asked that this issue be considered and discussed again at next month's meeting.

There are no education stipulations for review.

#### **HEARING OFFICER REPORT – Justin Barney**

There are no licensing stipulations for review.

#### **COMMISSION AND INDUSTRY ISSUES**

Mr. Barney reported the rules committee has been meeting regularly. The rules committee is working on a draft rules proposal, which should be ready to present soon.

A brief recess was held from 10:00 a.m. to 10:08 a.m.

#### **INFORMAL HEARINGS:**

10:08            Brandon Bluth - Application for Licensure

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The motion was approved.

#### **CLOSED TO PUBLIC**

An Executive Session was held from 11:48 a.m. to 12:52 p.m.

**OPEN TO PUBLIC**

**Results of Executive Session**

Results of Stipulations

Shawn Janke – Approved with Division Concurrence

Thomas A. Jackson– Approved with Division Concurrence

Mr. Bluth will be notified by mail as to the outcome of his hearing.

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The meeting adjourned at 12:53 p.m.